

No. 9/5/84-6 Lab./4133.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workmen and management of M/s. Shrimad Dayanand Putri Pathshala, Babra Mohalla, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

References No. 233, 238 and 241 all of 1979.

between

SMT. RAJ KUMARI, SMT. SHANTA KUMARI AND MISS PARKASHWANTI, WORKMEN AND
THE MANAGEMENT OF M/S. SHIRMA DAYANAD PUTRI PATHSHALA, BABRA MOHALLA,
ROHTAK

Shri S.S. Gupta, A.R. for the workmen.

Shri M.M. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Smt. Raj Kumari, Smt. Shanta Kumari and Miss Parkashwanti and the management of M/s. Shrimad Dayanand Putri Pathshala, Babra Mohalla, Rohtak, to this Court, for adjudication—*vide* Labour Department Gazette Notification Numbers ID/RTK/189-79/57583, dated 20th December, 1979, ID/RTK/191-79/58148, dated 27th December, 1979, and ID/RTK/190-79/58203, dated 27th December, 1979.

Whether the termination of services of Smt. Raj Kumari, Smt. Shanta Kumari and Miss Parkashwanti were justified and in order? If not, to what relief are they entitled?

2. After receipt of the order of references, notices were issued to the parties. The parties appeared. The claim of the workman are that they were employed as Teachers with the respondent, though in different years and that their work and conduct was satisfactory but the respondent choose to terminate their services on 20th May, 1979 as a reprisal to the demand for arrears put forth by them and after their termination, the respondent choose to employ fresh hands and so it is alleged that their termination was illegal and unlawful. So, they have prayed for reinstatement with continuity of service and full back wages.

3. Though three separate written statements were filed by the respondent but the refrain of the same is common. The preliminary objections taken are that the respondent is not an 'industry' as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), nor the applicants are workmen as defined in section 2(s) of the said Act and that the respondent institution has since been closed and as such the proper remedy available to the applicants was to approach the Education Department and not the Labour Court. On merits, also the claim of the workman has been controverted in toto. It is alleged that termination of services of the applicants were necessitated, because of closure of the institution.

4. Three references bearing numbers 233, 238 and 241 all of the year 1979 were ordered to be consolidated by my learned predecessor—*vide* his order dated 2nd December, 1980, because common question of law and facts were involved. He further directed that proceedings shall be recorded in reference number 233 of 1979. Earlier issues were framed in reference number 233 of 1979, which were adopted in other references also. The issues framed on 6th May, 1980 are as under:

1. Whether the respondent institution is covered under the definition of the Industrial Disputes Act?
2. Whether the applicant is a workman under section 2(s) of the Industrial Disputes Act?
3. Whether the reference is bad in law as per reason given in para 3 and 4 of the preliminary objections?
4. Whether the termination of services of Smt. Raj Kumari, Smt. Shanta Kumari and Miss Parkashwanti were justified and in order? If not, to what relief are they entitled?

5. My learned predecessor further directed that issues No. 1, 2 and 3 shall be disposed of and tried as preliminary issues.

6. At this stage, it may be mentioned that reference No. 238 of 1979 was disposed of as settled between the parties—*vide* order, dated 5th April, 1982, but unfortunately no award was rendered on the basis of the same. I propose to do so now that in terms of the settlement arrived at between the parties, no dispute award is rendered in reference number 238 of 1979, because after settlement nothing survives for adjudication.

7. Now, I shall confine my discussion to the remaining references bearing numbers 233 and 241 of 1979.

8. Though the parties choose to adduce oral evidence in support of the preliminary issues framed but at the time of arguments none of the parties made any reference to the oral evidence, and rightly so, because the same is not germane for the disposal of the preliminary issues. My findings on the preliminary issues are as under:—

Issue No. 1:—

9. The learned Authorised Representative of the respondent frankly conceded that he has no arguments to offer on this issue, because the controversy on the point stands clinched by the Hon'ble Supreme Court judgement in the Bangalore Water Supply Case reported in 1978 Lab. I.C. 467, wherein their Lordships have held that Education Department is an "industry" overruling the earlier judgement of its own Court rendered in Dehli University Case. So, there is no dispute that the respondent is an "industry" as defined section 2(j) of the said Act and as such, this issue is answered in favour of the applicants.

Issue No. 2:—

10. On this issue also, the learned Authorised Representative of the applicants without offering concession to the Court conceded that the question of a teacher being a "workman" has also been decided by the Hon'ble Supreme Court in the Bangalore Water Supply case and as such any dilation on this issue would be wastage of time of the Court. These two authorities of the Hon'ble Supreme Court came up for detailed discussion before the Hon'ble High Court of Bombay in a authority reported in 1983 (47) 378 Indian Factories and Labour Reports between *Miss A. Sundarambal and Government of Goa, Daman and Diu, and others*. Repelling the contention raised before his Lordship and now before me by the husband of one of the petitioners that since the University has been held to be an "industry" so, the teachers employed there in would automatically become workman. It was observed in paragraph number 12 of the judgement as under:—

"While holding, in Bangalore Water Supply case, that education is an industry, thus overruling the earlier judgement in the University of Dehli case, the Supreme Court did not say that the foundation of the judgement of the Supreme Court in the University of Dehli case was wrong. It did not, for example, hold that teachers were workmen and therefore, the University would necessarily be an industry. On the other hand, it was held that education itself is an industry because it satisfied the triple tests of systematic activity while examining the judgement in the University of Dehli case, the Supreme Court in Bangalore Water Supply case, noticed that two reasons had been given to avoid the conclusion that imparting education was an industry. The first ground relied upon by the Court in the earlier case, according to the Bangalore Water Supply judgement, was based upon the preliminary conclusion that teachers were not workmen by definition. In this connection it was observed by the Supreme Court as follows:—

"Perhaps they are not, because teachers do not do manual work of technical work. We are not too sure whether it is proper to disregard with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present."

In fact, proceeding further, the Supreme Court in Bangalore Water Supply case adopted what it called the assumption of the University of Dehli's case that teachers were not workmen to examine the question as to whether a university is an industry. Mr. Dias, therefore, is demonstrably on the sound ground when he says that the Bangalore Water Supply case did not overrule the decision given by the University of Dehli case that teachers employed in a university are not workman, though it did hold that education, an activity carried on by the university, is an industry.

11. In the similar vein summarising his views his Lordship observed, as under in paragraph 29 of the said judgement:—

"Summarising, we may state that the University of Dehli's case hold that teachers were not workman and this part of the judgement in the said case had not been dissented from nor has it been overruled by the later judgement of the Supreme Court in Bangalore Water Supply's case".

12. So, there is no scope for dissent or discussion that teachers are not workmen as defined in section 2(s) of the said Act and so, this issue is answered against the applicants.

Issue No. 3:—

13. This issue was not pressed on behalf of the respondent, So, the same is answered in favour of the applicants.

14. Since I have held that applicants in reference number 233 and 241 of 1979 are not workmen as defined in section 2(s) of the said Act and so, these references to this Court are bad in law. These references are answered and retruned accordingly, There is no order as to cost. However, a copy of this award be placed upon the file of reference numbers 241 and 238 both of the year 1979.

The 29th April, 1985.

B. P. JNIDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 233/79/764, date 11th May, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/4134.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workmen and the management of (i) Haryana State Minor Irrigation Tubewell corp., Chandigarh, (ii) Haryana State Minor Irrigation Tubewell Corporation Division No. 4, Fatehabad.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 199 of 1983

between

SHRI KALA RAM, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA STATE MINOR IRRIGATION TUBEWELL CORPORATION, CHANDIGARH, (ii) HARYANA STATE MINOR IRRIGATION TUBEWELL CORPORATION DIVISION NO. 4, FATEHABAD.

Present—

Shri T.C. Gupta, A.R. for the workman.

Shri P.K. Bansal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Kala Ram and the management of M/s. Haryana State Minor Irrigation Tubewell Corporation Chandigarh, (ii) Haryana State Minor Irrigation Tubewell Corporation Division No. 4, Fatehabad, to this Court, for adjudication,—vide Labour Department Gazette Notification No. 58668—73, dated 9th November, 1983 :

Whether the termination of services of Shri Kala Ram is justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was working with the respondent as a T/Mate since the year 1981 on monthly wages of Rs. 383, but his services were terminated by the respondent,—vide order dated 6th January, 1983, which was passed in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, 1947, because no retrenchment compensation was ever paid to him.

3. In the reply filed by the respondent, the claim of the workman has been controverted. It was alleged that the petitioner was employed on temporary basis for a specific period, after completion of which, his services were found no longer required and there were gaps in the employment of the petitioner, because he was absent from duty from 4th July, 1981 to 5th July, 1981.

4. On the pleadings of the parties, the following issues were framed by me on 29th January, 1985 :—

Whether the termination of services of Shri Kala Ram is justified and in order ? If not, to what relief is he entitled ?

5. The workman appeared as WW-1 in support of his claim and on behalf of the management Shri P.K. Bansal, Junior Engineer appeared as MW-1.

6. Parties heard. My findings on the issue framed are as below :

7. Even if, the statement of Shri P.K. Bansal, Junior Engineer, is believed that the workman remained absent from duty on 4th July, 1981, 5th July, 1981, 10th July, 1981 to 30th September, 1981 even than the workman has put in more than 240 days of actual work with the respondent during the last 12 calendar months from the date his services were terminated. This could not have been done by the respondent without payment of retrenchment compensation and prior notice to the workman. So, the order of termination cannot be sustained and the same is set aside and the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

B.P. JINDAL,

Dated the 30th April, 1985.

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 199/83/765, dated the 11th May, 1985

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/4135.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of Haryana Roadways, Hissar.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 94 of 1983

between

SHRI DHARAM PAUL, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, HISSAR.

Present—

Shri S.N. Vats, A.R., for the workman.
Shri V.K. Kohli, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Dharam Paul and the management of Haryana Roadways, Hissar, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/20-83/30963-67, dated 30th June, 1983 :

Whether the termination of service of Shri Dharam Paul was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was appointed as Conductor with the Haryana Roadways Depot on 18th December, 1980 and that vide order dated 23rd November, 1982 he was transferred as such to Hissar Depot, where the General Manager of the said Depot choose to terminate his services unlawfully on 23rd December, 1982 and that his termination amounts to retrenchment, but the respondent did not choose to comply with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and so the order of termination is illegal, void *ab initio* and liable to be set aside.

3. In the reply filed by the respondent, it is alleged that the reference is not maintainable, because on cause of action has accrued in favour of the workman. On merits, it is alleged that the applicant was appointed as Conductor in Haryana Roadways, Gurgaon on 1st March, 1980 on *ad hoc* basis but his services were discontinued w.e.f. 4th August, 1980 and thereafter he was re-employed at Hissar Depot on temporary basis after his name was sponsored by the S.S.S. Board, Haryana, Chandigarh on 26th November, 1982 and that since his work and conduct was not satisfactory, so, the workman was discharged from employment on 23rd December, 1982 as he was on probation for a period of two years. So, it is alleged that the order of termination was legal and proper.

4. On the pleadings of the parties, the following issues were settled for decision on 14th September, 1984 :—

- (1) Whether the reference is bad in law ? OPR
- (2) Whether no cause of action has accrued in favour of the workman ? OPR
- (3) Whether the termination of service of Shri Dharam Paul was justified and in order ? If not, to what relief is he entitled ?

5. The management examined MW-1 Shri Ramesh Kumar, Clerk, Haryana Roadways, Hissar Depot. The workman examined WW-1 Shri Dharam Paul, Clerk, Haryana Roadways, Gurgaon Depot, WW-2 Shri Hans Raj, Clerk Haryana Roadways Gurgaon and himself appeared as WW-3.

6. The learned Authorised Representative of the parties heard. My findings on the issues framed are as below :—

7. *Issue No. 1 & 2.*—There is nothing on the file as to how the reference is bad in law or no cause of action has accrued in favour of the workman to raise the present industrial dispute, since his services were terminated by the respondent. So, the learned Authorised Representative of the respondent was lukewarm in pressing these issues.

8. *Issue No. 3.*—The star contention of the learned Authorised Representative of the respondent was that the workman was employed on 26th November, 1982 after his name had been sponsored by the S.S.B., Haryana, Chandigarh, and as per terms of appointment he was on probation for a period of two years but since his work and conduct was not found satisfactory, he was discharged after less than one month i.e. 23rd December, 1982 and so, provisions of section 25F of the said Act are not attracted, as the workman had not put in 240 days of actual work with the respondent. In my opinion, this contention is mis-conceived and against the factual position. The workman had examined WW-1 Shri Dharam Paul, Clerk, Haryana Roadways, Gurgaon, who stated that the workman has employment 1st March, 1980 and remained employed upto 31st May, 1980 and his services were dispensed with from 1st June, 1980 to 28th June, 1980 but he was taken on duty on 29th June, 1980 and remained on duty upto 8th August, 1980 but was again declared surplus from 9th August, 1980 to 17th December, 1980 but was again taken on duty from 18th December, 1980 to 26th September, 1981 and that on 23rd November, 1982 the workman was transferred to Hissar Depot. The relieving chit is Ex. W-1. He further stated that the post of a Conductor in the respondent roadways is transferable. During the course of arguments the learned Authorised Representative of the respondent tried to feign ignorance about previous employment of the workman on the ground that no service record of the workman was sent to the Hissar Depot. For this negligence of the Gurgaon Depot, the workman cannot be punished. The clerk of the Gurgaon Depot stated that the workman was transferred from Gurgaon Depot on 23rd November, 1982 and the relieving chit was issued to him on the said date and under these circumstances, the respondent was not right in arguing that the workman was employed on 26th November, 1982 and his services were dispensed with on 23rd December, 1982 as his work and conduct was not found satisfactory. Actually, with some breaks the workman remained in the employment of the respondent roadways from 1st March, 1980 to 23rd December, 1982. If the period for which the workman had not on duty is excluded, even then the workman has put in more than 240 days of work with the respondent during the last 12 calendar months from the date of his termination. In this situation, the respondent could not have dispensed with the services of the workman without complying with the provisions of section 25F of the Industrial Disputes Act, 1947. Simply because a letter of appointment was issued by the Subordinate Services Selection Board, Haryana, Chandigarh, regarding employment of the workman will not divest the workman from his right to claim benefits of previous service, which he has put in with the respondent roadways at Gurgaon Depot. So, the order of termination is void abinitio having been passed without complying with the mandatory provisions of section 25F of the Industrial Disputes Act, 1947 and as such the same is set aside. The workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 30th April, 1985.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 94/83/766, dated the 11th May, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak